STATE OF MICHIGAN

COURT OF APPEALS

JULIE VAN ORMEN, Plaintiff-Appellant,	UNPUBLISHED April 14, 2011
v	No. 295661 Oakland Circuit Court
MEIJER, INC., Defendant-Appellee.	LC No. 2009-097753-NO

Before: BORRELLO, P.J., and JANSEN and FORT HOOD, JJ.

PER CURIAM.

In this premises liability case, plaintiff appeals by right the trial court's order granting summary disposition in favor of defendant. We affirm. This appeal has been decided without oral argument. MCR 7.214(E).

Plaintiff is legally blind and was participating in training with Leader Dogs for the Blind at defendant's store. Upon arrival, plaintiff's instructor advised her that the door to the store was to her left and that she should tell her dog to go left and find the door. Plaintiff said she fell when she "stepped in the door" and there was water on the mat. Defendant conceded that the mat might have been wet, but disputed that there was standing water. Defendant acknowledged that there was a blower fan in place for the purpose of preventing water accumulation.

In granting summary disposition, the trial court concluded that the alleged danger posed by the mat was open and obvious. Further, the court concluded that there were no special aspects of the condition that would give rise to a uniquely high likelihood or severity of harm. Thus, the court concluded that plaintiff had failed to establish an exception to the open and obvious danger doctrine.

Plaintiff first argues that this Court should overturn *Lugo v Ameritech Corp, Inc*, 464 Mich 512; 629 NW2d 384 (2001), and adopt the rule of law set forth in §§ 343 and 343A of the Restatement of Torts, 2d. Plaintiff maintains that under the Restatement, a premises owner would be held liable for open and obvious dangers if he or she did not remedy an unreasonably dangerous condition that he or she would anticipate an invitee would encounter. Section 343 provides:

> A possessor of land is subject to liability for physical harm caused to his invitees by a condition on the land if, but only if, he

> (a) knows or by the exercise of reasonable care would discover the condition, and should realize that it involves an unreasonable risk of harm to such invitees, and
>
> (b) should expect that they will not discover or realize the danger, or will fail to protect themselves against it, and
>
> (c) fails to exercise reasonable care to protect them against the danger.

Section 343A provides in pertinent part:

> (1) A possessor of land is not liable to his invitees for physical harm caused to them by any activity or condition on the land whose danger is known or obvious to them, unless the possessor should anticipate the harm despite such knowledge or obviousness.

In *Lugo*, our Supreme Court expressly addressed these provisions of the Restatement, stating:

> When §§ 343 and 343A are read together, the rule generated is that if the particular activity or condition creates a risk of harm *only* because the invitee does not discover the condition or realize its danger, then the open and obvious doctrine will cut off liability if the invitee should have discovered the condition and realized its danger. On the other hand, if the risk of harm remains unreasonable, despite its obviousness or despite knowledge of it by the invitee, then the circumstances may be such that the invitor is required to undertake reasonable precautions. [*Lugo*, 464 Mich at 516-517 (emphasis in original).]

Interpreting these provisions, the *Lugo* Court concluded:

> In sum, the general rule is that a premises possessor is not required to protect an invitee from open and obvious dangers, but, if special aspects of a condition make even an open and obvious risk unreasonably dangerous, the premises possessor has a duty to undertake reasonable precautions to protect invitees from that risk. [*Id*. at 517.]

This Court is bound by decisions of our Supreme Court until our Supreme Court overrules itself. *People v Mitchell*, 428 Mich, 364, 369-370; 408 NW2d 798 (1987); *O'Dess v Grand Trunk Western R*, 218 Mich App 694, 700; 555 NW2d 261 (1996). Accordingly, plaintiff cannot prevail unless she can show that there were special aspects of the condition that made the open and obvious risk unreasonably dangerous. In this regard, we note that the focus is on the "condition" and not on the individual plaintiff's limitations. See *Bragan ex rel Bragan v Symanzik*, 263 Mich App 324, 332; 687 NW2d 881 (2004).

The *Lugo* Court directed that in evaluating whether special aspects would remove a condition from the open and obvious danger doctrine, a court would have to find that the special aspects "g[ave] rise to a uniquely high likelihood of harm or severity of harm if the risk is not avoided[.]" *Lugo*, 464 Mich at 519. As an example, the *Lugo* Court posited that an unguarded thirty-foot-deep pit in the middle of a parking lot "would present such a substantial risk of death

or severe injury to one who fell in the pit that it would be unreasonably dangerous to maintain the condition . . . ." *Id*. at 518. The *Lugo* Court further indicated that a special aspect could exist if the danger were "effectively unavoidable." *Id.*

Plaintiff argues that the entrance to defendant's store was effectively unavoidable because she was directed to use that entrance. However, she was not directed to do so by defendant's personnel. Moreover, there has been no showing that she was foreclosed from using an alternate entrance. While she suggests that other entrances might have posed the same hazard, there was no evidence to support such a theory. Under similar circumstances in *Corey v Davenport College of Business (On Remand)*, 251 Mich App 1, 9; 649 NW2d 392 (2002), where the plaintiff could have used an alternate nearby entrance, this Court found that the condition was not effectively unavoidable and therefore not unreasonably dangerous.

Affirmed. As the prevailing party, defendant may tax costs pursuant to MCR 7.219.

/s/ Stephen L. Borrello
/s/ Kathleen Jansen
/s/ Karen M. Fort Hood